THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.4139 of 1999

Dated 8th February 2007

Between:

Mirza Nazeer Baig & others

...Petitioners

and

The Deputy Collector, Flying Squad, Zone VI, Hyderabad.

...Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.4139 of 1999

O R D E R:

The petitioners challenge the order, dated 9.1.1999, passed by the Deputy Collector, Flying Squad, Zone VI, passed by the respondent herein, in exercise of power under Section 73 of the Indian Stamp Act (for short "the Act"), as amended through A.P. Act 17 of 1986.

The respondent is said to have inspected certain records of the office of the Mandal Revenue Officer, Balanagar, during the course of audit, as part of Flying Squad, Zone-VI, Hyderabad. On noticing that certain deeds of assignments executed by Sri Kazim Nawab Jung, M/s.Cyrus Investments Private Limited, and M/s.Suryavamshi Enterprises, on unstamped papers, in

favour of 20 assignees, the respondent seized the said documents. After observing the prescribed procedure, he ultimately came to the conclusion that a sum of Rs.3,32,87,350/-, in all, ought to have been paid as stamp duty. Through the impugned order, he required the petitioners herein, to pay the said amount. It was also indicated that in case the amount is not paid, penalty as provided for under Section 48 of the Act, would be levied and steps for recovery of the same would be initiated under the Revenue Recovery Act.

Petitioners contend that the sole basis for the respondent, in passing the impugned order, was Section 73 of the Act, as amended through A.P. Act 17 of 1986. They state that since the said provision was held to be *ultra vires*, through a judgment of this court in ***CANARA BANK v. DISTRICT REGISTRAR & COLLECTOR***[1] (upheld by the Supreme Court in ***DISTRICT REGISTRAR & COLLECTOR, HYDERABAD v. CANARA BANK***[2]), the impugned order is liable to be set aside.

On behalf of the respondent, a detailed counter affidavit is filed, narrating the circumstances that led to the passing of the impugned order. It is stated that notwithstanding the fact that Section 6 of the A.P. Act 17 of 1986, substituting Section 73 of the Act, was struck down, the impugned order can be sustained under the unamended provision. It is also stated that once the petitioners do not dispute the fact that the stamp duty was not paid on the documents, they cannot escape from

their liability.

Heard Sri D.Prakash Reddy, learned Senior Counsel, appearing for the petitioners, and Sri A.Satyaprasad, learned Special Government Pleader appearing for the State.

The area of controversy in this writ petition is very limited. Beyond any pale of doubt, the impugned order was passed, in exercise of powers under Section 73 of the Act, as amended through A.P. Act 17 of 1986. It is a matter of record that the amended provision was struck down by this court in ***Canara Bank's*** case[1]. The Hon'ble Supreme Court upheld the judgment of this court, in its judgment in ***District Registrar & Collector's*** case[2]. Once the provision, on the basis of which the impugned order was passed, is set aside, it becomes imperative that the impugned order is also set aside.

This court finds it difficult to accept the contention advanced on behalf of the respondent that the impugned order can be sustained, on the basis of the unamended provision. Assuming that Section 73 of the Act stood revived, with the striking off, of the amended provision, the exercise undertaken by the respondent, only to the extent of inspection, can be sustained, at the most. The unamended provision does not permit, either seizure or impounding of the document, straight away. Therefore, there is no way that the impugned order can be traced, to the unamended provision.

Therefore, the writ petition is allowed, and the impugned order is set aside. It is, however, made clear that it shall be open to the respondent herein, or the State, to initiate such steps as are open to them in law, *vis-à-vis* the documents in question. There shall be no order as to costs.

8th February 2007

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[1] 1997(4) ALT 118 (D.B.)

[2] AIR 2005 SC 186